(4) (1)

CF300/

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W.P. No. 1432/2003

(PUBLIC INTEREST LITIGATION)

PETITIONERS

1. Dr Arunima Sharma
aged about 32 years
D/O Shri Y.K. Sharma
R/O D-3 Vidyaup Nagar,
Bilaspur,
District Bilaspur (C.G.)

2. Dr. Neeta Shrivastava
aged about 41 years
W/O Dr. Sushil Shrivastava
R/O A-155 Agaya Nagar
Bilaspur (Chhattisgarh)

3. Smt. R. Vibha Rao
W/O Shri R.J. Rao
aged about 43 years
R/O L-9 Vinoba Nagar
Bilaspur (Chhattisgarh)

P. R. No. 1203/03
Presented by Shri Sanjeev Subeg
dated 21.10.03

VERSUS

RESPONDENTS

1. State of Chhattisgarh
through Secretary
Department of Education
DKS Bhawan, Raipur (C.G.)

2. U.G.C. Grants Commission
Bahadur Shah Zafar Marg,
New Delhi - 110002

3. Pt. Ravishankar University
through Registrar
Raipur (Chhattisgarh)

4. Guru Ghasidas University
through Registrar
Bilaspur (Chhattisgarh)

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शपथ आयुक्त
एस के गुप्ता
बिलासपुर (छ.ग.)
21/10/03
बिलासपुर तहसील कोर्ट

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRITS DIRECTIONS AND OTHERS :

1. PARTICULARS OF THE PETITIONERS :-

As stated above in the cause title.

AFR (176)

HIGH COURT OF CHHATTISGARH AT BILASPUR

(DIVISION BENCH)

Coram : **Hon'ble Shri A.K. Patnaik, C.J.,**
Hon'ble Shri Sunil Kumar Sinha, J

W.P. No.1432 of 2003

Dr. Arunima Sharma and others

Vs.

State of Chhattisgarh and others

Appearance:

Mr. Kanak Tiwari, Sr. Advocate with Mr. Prateek Sharma, for the petitioners.

Mr. V.V.S. Murthy, Deputy Advocate General, for the State/ respondent no.1.

Mr. A.S. Gaharwar, counsel for respondent no.2.

ORDER
(06.07.2005

The following order has been passed by Hon'ble Shri **A. K.Patnaik, C.J.**

(1) Petitioner no.1 holds Postgraduate Degree in History. Petitioner no.2 is the Chairman of Educational Sub-Committee of the Municipal Corporation, Bilaspur. Petitioner No.3 is an advocate and at the time of filing writ petition was the Chairman of the Municipal Corporation, Bilaspur. They have filed this Public Interest Litigation under Article 226 of the Constitution of India challenging the provisions of Chhattisgarh Higher Education Services Recruitment Rules 2002.

(2) The case of the writ petitioners is that the University Grants Commission has framed regulations on minimum qualification for Appointment and Career Advancement of Lecturers, Readers and Professors in Universities and Colleges under section 26 read with Section 14 of the University Grants Commission Act 1956 by notification issued in March 2000 and in the said regulations it has been prescribed that for appointment as a Lecturer, a candidate should have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR or similar test affiliated by the UGC such as State Level Eligibility Test (SLET). But under the Chhattisgarh Higher Education Services Recruitment Rules 2002, candidates who have not passed NET/SLET can be considered for appointment to the post of Lecturer/Assistant Professor in different colleges situated in the State of Chhattisgarh whereas petitioner no. 1 who has passed NET is not being considered for the post of Lecturer/Assistant Professor in the colleges of Chhattisgarh.

(3) Mr. Kanak Tiwari, learned counsel for the petitioners submits that a plain reading of Chhattisgarh Higher Education Service Recruitment Rules 2002 as notified by the notification dated 9th July 2002 would show that for assessing the merit of the candidates only two marks are added as grace marks, but there is no provision in the said Recruitment Rules 2002 that a candidate will not be eligible for consideration at all for appointment to the post of Lecturer/Assistant Professor in Chhattisgarh unless he has passed NET or SLET. In support of his contention, Mr.Tiwari, cited a decision of the Supreme

Court in the case of ***Jatinder Singh –Vs- Gurmeet Singh Sidhu and others (2001) 6 SCC 508*** in which the Supreme Court has held that clearing of eligibility test viz., NET conducted by UGC or other similar tests as specified in the university circular dated 18.5.1999 was absolutely necessary. He also cited the decision of the Supreme Court in ***Brahmo Samaj Education Society and others –Vs- State of W.B. and others reported in (2004) 6 SCC 224*** in which the Supreme Court has *inter-alia* held that only a person who has qualified NET or SLET will be eligible for the appointment as Lecturer in an aided institution in view of the Regulations made in this regard by the U.G.C.

(4) Mr.A.S.Gaharwar, learned counsel appearing for the University Grants Commission supported the contention of the petitioners and submitted that it will be clear from the aforesaid U.G.C. regulations, a copy of which has been produced before us by him that a candidate for a post of Lecturer should have cleared the eligibility test (NET) for lecturers conducted by UGC or CSIR or equivalent test accredited by the UGC. In this context, he referred to the clause 1.3.3 of the Annexure to the Notification of March 2000 made under section 26 read with section 14 of the University Grants Commission Act 1956 as well as the note appended thereto to show that NET shall remain compulsory requirement for the appointment as Lecturer even for the candidates having Ph.D. degree. He pointed out that in the said note as amended it is stated that a candidate who has completed M.Phil. degree

or has submitted Ph.D. thesis to the University in the concerned subject on or before 31st December 2002 is exempted from appearing for the NET examination and only in case such candidate fails to obtain Ph.D., he shall have to pass NET examination. Mr. Gaharwar further submitted that Section 14 of the University Grant Commission Act, 1956 provides for the consequences of failure of the Universities to comply with the recommendations of the University Grants Commission. He submitted that in the case of ***University of Delhi –Vs- Raj Singh and others AIR 1995 S.C. 336*** a question came up before the Supreme Court as to whether the Delhi University has to comply with the regulations made by the University Grants Commission prescribing the qualifications for the post of Lecturer and the Supreme Court held that regulations made by the UGC in this regard are not only valid, but mandatory and the Delhi University was obliged under the law to comply with the same.

(5) Mr. Murthy, learned Deputy Advocate General for the State of Chhattisgarh submitted that the Chhattisgarh Higher Education Recruitment Rule 2002 has been in the meanwhile amended by a notification dated 29th April 2005 and it has been provided in the notification under the amended sub-rule (3) of Rule 5 of the Chhattisgarh Higher Education Recruitment Rules 2002 that first of all consideration shall be made of the applications of NET/SLET passed candidates and in case of non-availability of such candidates, the applications of other candidates shall be considered. He submits that in view of the

aforesaid amendment brought about the notification dated 29th April 2005, this writ petition no longer survives.

(6) Mr.Kanak Tiwari, learned counsel, however, submits that it appears from the amendment brought about the notification dated 29th April 2005 that the candidates whould be given 25 merit marks for passing the NET/SLET examination, but the case of the petitioners is that a candidate is not eligible for consideration for the post of Lecturer/Assistant Professor in a college of Chhattisgarh unless he passes the NET/SLET examination.

(7) The notification dated 29th April 2005, by which sub-rule (3) of Rule 5 of the Chhattisgarh Higher Education Services Recruitment Rules 2002 has been substituted, is quoted herein-below:

Raipur, the 29th April 2005

NOTIFICATION

No.F-1-2/2004/38.—In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, Governor of Chhattisgarh makes the following amendments in the Chhattisgarh Higher Education Services Recruitment Rules, 2002 namely :

AMENDMENT

In the said rule, -

For sub-rule (3) of rule 5 the following sub-rule shall be substituted namely :-

For preparing Merit List there shall be maximum of 100 marks and the criteria shall be as follows –

(a) for passing NET or SLET examination - **25** merit marks

(b) for marks obtained at degree lever there shall be – **25** merit marks

For 50%-0 marks, 51% to 70% one mark for each percentage and for obtaining more than 70 marks 05 bonus marks shall be awarded (for awarding bonus marks 70.5% or above has to be obtained).

(c) For marks obtained at post graduate level there shall be **30** merit marks

(181)

For 55% - 5 marks, from 56% to 75% one mark for each percentage and for obtaining above 75% marks, 05 bonus marks shall be awarded (for awarding bonus marks 75.5% and above has to be obtained.

(d)	For M.Phil. degree	-	05 merit marks
(e)	For Ph.D. degree	-	10 merit marks
(f)	For teaching experience	-	05 merit marks

For five months or more in each year in the Govt. Colleges only 01 merit marks shall be awarded upto a maximum of 05 marks.

Total 100 merit marks

Note:

(1) First of all, consideration shall be made on the application of the NET/SLET passed candidates. In each of non-availability of such candidates, the application of other candidates shall be considered.

(2) A relaxation of 5% in the minimum marks obtained at graduate and post graduate level shall be given to the scheduled caste and scheduled tribe candidates in educational qualifications of the recruitment rules.

By order and in the name of Governor of Chhattisgarh.

(S.R. Brahmne)
Deputy Secretary

It appears from the provisions of Sub-rule (3) of Rule 5 as substituted by the aforesaid notification dated 29th April 2005 that for preparing merit list, there shall be maximum of 100 marks and for passing in NET/SLET examination 25 merit marks would be given to a candidate. Note (1) appended to sub-rule (3) of Rule 5 as substituted by the notification dated 29th of April 2005, however, provides that first of all, consideration shall be made of the applications of NET/SLET passed candidates and in case of non-availability of such candidates, the applications of other candidates shall be considered. A reading of the aforesaid two provisions in sub-rule (3) of Rule 5 would mean that from amongst the candidates who have passed NET/SLET examinations, a merit

list shall be prepared in accordance with the provisions of Sub-rule (3) of Rule 5 and on the basis of such merit list, the NET/SLET passed candidates will be selected for appointment to the post of Lecturer/Assistant Professor and after such consideration of the NET/SLET passed candidates is over on the basis of merit, if there are more posts available and no NET/SLET passed candidates are at all available, candidates who have not passed NET/SLET can be considered on the basis of their merit as assessed in accordance with sub-rule (3) of Rule 5 of the Rules as substituted by the notification dated 29th of April 2005.

(8) The question still remains as to what is the legal consequence of the recruitment of a candidate who has not passed NET/SLET examination and who is not covered by the exceptions provided in the Note as amended in the annexure to the Notification of March 2000 made under Section 26 read with Section 14 of the said Act. This has been answered by the Apex Court in the case of ***University of Delhi -Vs- Raj Singh and others (supra)***. The relevant portion of the said judgment is quoted herein-below:

> "It is now appropriate to clarify the direction that the Delhi High Court issued in allowing the writ petition. It held that the notification dated 19th September, 1991, by which the said Regulations were published, was valid and mandatory and the Delhi University was obliged under law to comply therewith. The Delhi University was directed to select lecturers for itself and its affiliated and subordinate colleges strictly in accordance with the notification. Put shortly, the Delhi University is mandated to comply with the said Regulations. As analysed above, therefore, the Delhi University may appoint as a lecturer in itself and its affiliated colleges one who

> has cleared the test prescribed by the said Regulations: or it may seek prior approval for the relaxation of this requirement in a specific case; or it may appoint as lecturer one who does not meet this requirement without having first obtained the UGC's approval, in which event it would, if it failed to show cause for its failure to abide by the said Regulations to the satisfaction of the U.G.C., forfeit its grant from the U.G.C. If, however, it did show cause to the satisfaction of the U.G.C., it not only would not forfeit its grant but the appointment made without obtaining the U.G.C's prior approval would stand regularized."

It will be clear from the aforesaid Judgment of the Supreme Court in which the provisions of the University Grants Commission Act 1956 including Section 14 thereof and the Regulations made by the University Grants Commission were considered at length and it was held that a Lecturer who does not satisfy the eligibility conditions as laid down in the Regulations made by the U.G.C., may be appointed with the prior approval for relaxation of the requirement in a specific case or when the appointment to the post of Lecturer is made who does not satisfy the eligibility condition without first obtaining such approval from the U.G.C., a show cause will be issued by the U.G.C and in case of failure to abide by the show cause or in case the show cause is not to the satisfaction of the U.G.C., action by way of withdrawal of grant in accordance with the provisions of the University Grants Commission Act 1956 may be taken by the U.G.C.

(9) With the aforesaid declarations and directions, this writ petition stands disposed of.

Sd/-
Chief Justice

Sd/-
Sunil Kumar Sinha
Judge

Rao